IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7052 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NIRUBEN GULABSINH CHAUHAN

Versus

JOINT SECRETARY

Appearance:

1. Special Civil Application No. 7052 of 2002

MR RC JANI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/08/2002

ORAL JUDGEMENT

1. Leave to produce medical certificate issued by General Hospital, Godhra dated 18-5-2001 as Annexure "F".

2. Rule. Ms.Manisha Lavkumar, learned AGP waives service of notice of rule. With the consent of the parties, the matter is taken up for final hearing today.

3. The petitioner has applied for admission to PTC course pursuant to the advertisement dated 13th June, 2002. The petitioner was thereafter not called for interview and upon enquiry, the petitioner came to know that though there is reservation of 3% for admission to physically handicapped persons, two categories of defect in vision and of duff and dump persons are excluded for the purpose of reservations and only locomotive disability is maintained and, therefore, the petitioner was not called for interview as not included in the reserved category and hence this petition.

4. On behalf of the respondent, Mr.M.H.Patel, Deputy Director, Primary Education has filed the affidavit-in-reply, contending, inter alia, that after the reservations of 3% for physically handicapped persons for the admission of PTC course, the State Government has passed the resolution dated 10-7-2001, whereby it has been resolved that out of the three categories, if any of the physical disability is coming in the way of the students concerned during the study, then they can be excluded and the balance seats can be filled up by other physically handicapped persons of different categories whose physical disability is such which cannot come in the way of their study. The resolution dated 10-7-2001 is also produced on record.

5. Mr.R.C.Jani, learned Counsel for the petitioner has submitted that even if the resolution dated 10-7-2001 is accepted on its face value, then also it cannot be said that the petitioner is having such disability which would create any obstacle and hindrance in the study of PTC course. He submitted that the petitioner, as per the medical certificate, is having one eye fully functioning and the other is not functioning and she is having 50% visibility. He also submitted that she has studied up to 12th Standard and she has scored 74.33% in the 12th Standard of HSC Board Examinations. He further submitted that, therefore, there is no reason to arrive at a conclusion that with the 50% vision, the petitioner will not be able to study PTC course and he submitted that even otherwise also when the petitioner has 50% visibility, it cannot be said that the petitioner would in future be totally unfit to impart education to the students of primary level. Mr.R.C.Jani has relied upon the judgement in the case of "Tata Cellular v. Union of India" reported in 1996 SC 11 and also the judgement in

the case of "Haryana Financial Corpn. v. Jagdamba Oil Mills", reported in 2000(3) SCC, 496 to contend that policy cannot be unreasonable or arbitrary.

6. On behalf of the respondents, Ms.Manisha, the learned AGP, while supporting the action and relying upon the resolution dated 10-7-2001, has further submitted that the study of PTC course is such that ultimately those persons who successfully pass PTC course will be required to work as teachers in the primary section and the assignments of primary teachers are activity-based and they have to impart education in such a manner, where if a person is having 50% visibility it may not be possible for the person concerned to work as primary teacher and, therefore, keeping in view the said aspect, rationally the Government has passed the resolution dated 10-7-2001 by way of policy decision. It has also been submitted that the reservation of 3% is not reduced, but the balance seats would be allocated to the other physically handicapped persons and, therefore, she submitted that since it is the policy decision of the State Government, interference would not be called for.

7. It is true that normally this Court, while exercising power under Article 226 of the Constitution of India, would not interfere in a matter of policy decision of a State Government, unless the said policy decision is so perverse or arbitrary on the face of it. It is not a blanket proposition that the Court will not have any judicial review in a matter of policy decision. The policy decisions of the Government are also subject to the judicial review. It is true that the scope of judicial review in a matter of policy decision is very limited, but there are catena of decisions and it is well settled that if the policy is so obsolete or if the action of forming policy is on the face of it unreasonable, then the Court would interfere even in exercise of power under Article 226 of the Constitution of India. Keeping the said aspect in mind, the matter will have to be examined.

8. The perusal of the resolution dated 10-7-2001 shows that the Government has made reservation of 3% of the seats for physically handicapped persons. However, it has also been stated in the said resolution that if the physical disability or handicapness is such which creates any obstacle or comes in the way of educational activities of the students, then the seats can be allocated to other physically handicapped persons. Therefore, the resolution dated 10-7-2001 upon which reliance is placed is pertaining to the education

activities of the students and it cannot be stretched to the extent that after the study also the person is to face difficulty in imparting education and hence he or she should be kept out of such reservations even while study. So far as the petitioner is concerned, with 50% visibility and one eye functioning, she has been successfully able to study upto 12th Standard and she has scored 74.33% as mentioned earlier. Therefore, by no stretch of imagination it can be said that the petitioner will have any difficulty whatsoever in studying PTC course, nor can it be said that the physical handicapness of 50% visibility would come in the way of petitioner in studying PTC course.

9. That apart, even if the argument made on behalf of the respondent is tested to the extent that since the disability should not be such which would come in the way of the person concerned to impart education to the students, then also it cannot be said that the person with 50% visibility cannot work as a primary teacher. Of course, it may vary from case to case depending on the nature of duty, which is assigned to the said primary teacher, but by no stretch of imagination it can be said that such persons are 100% unfit to impart education as primary teachers.

10. In view of the above discussion, I find that the action of respondent authority in not considering the case of the petitioner for the reserved category of physically handicapped persons in granting admission to PTC course is unreasonable and arbitrary on the face of it and hence the same deserved to be quashed and proper direction deserves to be granted to consider the case of the petitioner for granting admission in PTC course in the reserved category of physically handicapped persons on the basis of, inter se, merit.

11. In the result, the respondents are directed to consider the case of the petitioner for grant of PTC admission as eligible candidate for claiming reserved category of physically handicapped persons and the respondents are further directed to consider the case of the petitioner in the reserved category on the basis of, inter se, merit order amongst the reserved category of 3%. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

28-8-2002 (Jayant Patel, J.)

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